

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY MAY 1, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2886

Introduced by Assembly Member Frommer
(Coauthor: Assembly Member Lieu)

February 24, 2006

An act to amend Section 530.5 of, and to add Section 593h to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2886, as amended, Frommer. Crime.

Existing law provides that every person who willfully obtains personal identifying information about another person, as defined, and uses that information for any unlawful purpose is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, or a fine not to exceed \$10,000, or both. Existing law also provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined, of another person, is guilty of a crime punishable by imprisonment in the county jail not exceeding a year, a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill, would provide that a second or subsequent violation of these provisions is also punishable by a fine not to exceed \$10,000, imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment. This bill would also provide that every person who, with intent to defraud, sells, transfers, or

conveys, the personal information of another without that person's consent, ~~or who, within any 12-month period acquires the personal identifying information of 4 or more other persons which he or she knows or has reason to know was taken in violation of provisions relating to identity theft,~~ is guilty of grand theft, punishable by imprisonment in a county jail for a period not exceeding one year or in the state prison for 16 months, or 2 or 3 years.

Because this bill would create new crimes, this bill would impose a state-mandated local program.

Existing federal law provides that mail theft is punishable by a fine, imprisonment for a period not exceeding 5 years, or by both.

This bill would provide that mail theft and receipt of stolen mail are crimes punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, imprisonment in the state prison for a period not exceeding 16 months, or 2 or 3 years, or by both that fine and imprisonment, as specified. This bill would also provide that the jurisdiction of a criminal action for violation of these provisions shall include the county in which the mail theft or receipt of stole mail occurred and the county in which the residence or place of business of the direct victim or an indirect victim is located. Because this bill would create new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 "Personal Information Trafficking and Mail Theft Prevention
- 3 Act."
- 4 SEC. 2. Section 530.5 of the Penal Code is amended to read:
- 5 530.5. (a) Every person who willfully obtains personal
- 6 identifying information, as defined in subdivision (b), of another

1 person, and uses that information for any unlawful purpose,
2 including to obtain, or attempt to obtain, credit, goods, services,
3 or medical information in the name of the other person without
4 the consent of that person, is guilty of a public offense, and upon
5 conviction therefor, shall be punished either by imprisonment in
6 a county jail not to exceed one year, a fine not to exceed one
7 thousand dollars (\$1,000), or both that imprisonment and fine, or
8 by imprisonment in the state prison, a fine not to exceed ten
9 thousand dollars (\$10,000), or both that imprisonment and fine.

10 (b) "Personal identifying information," as used in this section,
11 means the name, address, telephone number, health insurance
12 identification number, taxpayer identification number, school
13 identification number, state or federal driver's license number, or
14 identification number, social security number, place of
15 employment, employee identification number, mother's maiden
16 name, demand deposit account number, savings account number,
17 checking account number, PIN (personal identification number)
18 or password, alien registration number, government passport
19 number, date of birth, unique biometric data including
20 fingerprint, facial scan identifiers, voice print, retina or iris
21 image, or other unique physical representation, unique electronic
22 data including identification number, address, or routing code,
23 telecommunication identifying information or access device,
24 information contained in a birth or death certificate, or credit card
25 number of an individual person.

26 (c) In any case in which a person willfully obtains personal
27 identifying information of another person, uses that information
28 to commit a crime in addition to a violation of subdivision (a),
29 and is convicted of that crime, the court records shall reflect that
30 the person whose identity was falsely used to commit the crime
31 did not commit the crime.

32 (d) (1) Every person who, with the intent to defraud, acquires,
33 or retains possession of the personal identifying information, as
34 defined in subdivision (b), of another person is guilty of a public
35 offense, and upon conviction therefor, shall be punished by
36 imprisonment in a county jail not to exceed one year, or a fine
37 not to exceed one thousand dollars (\$1,000), or by both that
38 imprisonment and fine.

39 (2) If a person has previously been convicted of a violation of
40 this section and subsequently violates this subdivision, he or she

1 shall be punished by a fine not to exceed one thousand dollars
2 (\$1,000), imprisonment in a county jail for a period not to exceed
3 one year, or by both that fine and imprisonment, or by a fine not
4 to exceed ten thousand dollars (\$10,000), imprisonment in the
5 state prison for 16 months, or two or three years, or by both that
6 fine and imprisonment.

7 (e) Every person who, with the intent to defraud, sells,
8 transfers, or conveys, the personal identifying information of
9 another, without that person's consent, is guilty of grand theft,
10 punishable by imprisonment in a county jail for a period not
11 exceeding one year or in the state prison for 16 months, or two or
12 three years.

13 ~~(f) Notwithstanding subdivision (d), every person who, within~~
14 ~~any 12-month period, acquires the personal identifying~~
15 ~~information of four or more other persons, which he or she~~
16 ~~knows or has reason to know was taken or retained in violation~~
17 ~~of this section, is guilty of grand theft punishable by~~
18 ~~imprisonment in a county jail for a period not exceeding one year~~
19 ~~or in the state prison for 16 months, or two or three years.~~

20 ~~(g)~~
21 (f) Every person who, with the intent to defraud, acquires,
22 transfers, or retains possession of the personal identifying
23 information, as defined in subdivision (b), of another person who
24 is deployed to a location outside of the state is guilty of a public
25 offense, and upon conviction therefor, shall be punished by
26 imprisonment in a county jail not to exceed one year, or a fine
27 not to exceed one thousand five hundred dollars (\$1,500), or by
28 both that imprisonment and fine.

29 ~~(h)~~
30 (g) For purposes of this section, "deployed" means that the
31 person has been ordered to serve temporary military duty during
32 a period when a presidential executive order specifies that the
33 United States is engaged in combat or homeland defense and he
34 or she is either a member of the armed forces, or is a member of
35 the armed forces reserve or the National Guard, who has been
36 called to active duty or active service. It does not include
37 temporary duty for the sole purpose of training or processing or a
38 permanent change of station.

39 SEC. 3. Section 593h is added to the Penal Code, to read:

40 593h. (a) As used in this section:

1 (1) "Authorized depository" means a mailbox, post office box
2 or rural box used by postal customers to deposit outgoing mail or
3 used by the Postal Service to deliver incoming mail.

4 (2) "Mail" means any letter, card, parcel or other material that:

5 (A) Is sent or delivered by means of the Postal Service.

6 (B) Has postage affixed by the postal customer or Postal
7 Service or has been accepted for delivery by the Postal Service.

8 (C) Is placed in any authorized depository or mail receptacle
9 or given to any Postal Service employee for delivery.

10 (3) "Mail receptacle" means any location used by the Postal
11 Service or postal customers to place outgoing mail or receive
12 incoming mail.

13 (4) "Postage" means a Postal Service stamp, permit imprint,
14 meter strip or other authorized indication of prepayment for
15 service provided or authorized by the Postal Service for
16 collection and delivery of mail.

17 (5) "Postal Service" means the United States Postal Service.

18 (b) A person commits the crime of mail theft or receipt of
19 stolen mail if the person intentionally, without claim or pretense
20 of right, does any of the following:

21 (1) Takes or, by fraud or deception, obtains mail of another
22 from a post office, postal station, mail receptacle, authorized
23 depository, or mail carrier.

24 (2) Takes from mail of another any article contained therein.

25 (3) Secretes, embezzles, or destroys mail of another or any
26 article contained therein.

27 (4) Takes or, by fraud or deception, obtains mail of another
28 that has been delivered to or left for collection on or adjacent to a
29 mail receptacle or authorized depository.

30 (5) Buys, receives, conceals, or possesses mail of another or
31 any article contained therein knowing that the mail or article has
32 been unlawfully taken or obtained.

33 (c) Mail theft or receipt of stolen mail is a crime punishable by
34 a fine not exceeding one thousand dollars (\$1,000),
35 imprisonment in a county jail for a period not exceeding one
36 year, or by both that fine and imprisonment, or by a fine not
37 exceeding ten thousand dollars (\$10,000), imprisonment in the
38 state prison for 16 months, or two or three years, or by both that
39 fine and imprisonment.

1 (d) The jurisdiction of a criminal action for violation of this
2 section shall include all of the following:

3 (1) The county in which the mail theft or receipt of stolen mail
4 occurred.

5 (2) The county in which the residence or the place of business
6 of the direct victim or an indirect victim of the mail theft or
7 receipt of stolen mail is located.

8 (e) It is a defense to prosecution pursuant to this section that
9 the defendant acted under an honest claim of right in that:

10 (1) The defendant was unaware that the property was that of
11 another person.

12 (2) The defendant reasonably believed that the he or she was
13 entitled to the property involved or had a right to acquire or
14 dispose of it as the defendant did.

15 (3) The property involved was that of the defendant's spouse,
16 unless the parties were not living together as husband and wife
17 and were living in separate households at the time of the alleged
18 offense.

19 (e) This section does not apply to an employee charged with
20 the operation of a county jail, local detention facility, or facility
21 under the supervision of the Department of Corrections and
22 Rehabilitation if the employee is carrying out his or her official
23 duties to protect the safety and security of the facility.

24 SEC. 4. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the
29 penalty for a crime or infraction, within the meaning of Section
30 17556 of the Government Code, or changes the definition of a
31 crime within the meaning of Section 6 of Article XIII B of the
32 California Constitution.